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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. ——

HUBERT WORK, SECRETARY OF THE INTERIOR,
Petitioner

v.

STANDARD OIL COMPANY

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

Hubert Work, as Secretary of the Interior, prays that a writ of certiorari issue to review the judgment of the Court of Appeals of the District of Columbia (R. 125) affirming with costs the judgment of the Supreme Court of the District of Columbia (R. 113) in the above case.

OPINIONS OF THE COURTS BELOW

The opinion of the Supreme Court of the District of Columbia is set forth in the record filed herewith on page 95 and that of the Court of Appeals of the District of Columbia, on page 119.

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered on December 5, 1927. (R. 125.) The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

This case involves the question whether the Department of the Interior has ever determined the known mineral or nonmineral character of Section 36, T. 30 South, R. 23 East, M. D. B. & M., State of California, as of January 26, 1903, the date when the survey was accepted by the General Land Office.

STATEMENT OF THE FACTS

By the Act of March 3, 1853, c. cxlv, 10 Stat. 244, Congress granted to the State of California sections 16 and 36 for public-school purposes. This Act has been consistently construed to mean that if the lands in question were known mineral in character at the date of the approval of the survey, title thereto did not pass to the State. The determination of this question rests solely in the Department of the Interior.

The official survey returned this section as mineral in character. The State of California on March 7, 1903, offered this section as a base for indemnity school land selection on the ground of its

mineral character and this offer remained on file in the General Land Office until November 20, 1905.

Long prior to the date of survey, to wit, in July, 1900, the General Land Office had suspended from agricultural entry some forty-six townships in this part of California, including the township in which this section was located. The order recited that this suspension did not include mineral lands. (R. 11). In April, 1904, this township, together with about fourteen others, was relieved from this suspension. This order recited that only lands where active mineral development was in progress were continued suspended. (R. 16.)

On September 8, 1908, this section, together with other lands, was temporarily withdrawn from agricultural entry, pending examination and classification by the Geological Survey. (R. 91.) On June 4, 1909, it was classified as oil lands (R. 92) which classification was approved by the Secretary of the Interior, and the section was included in Temporary Withdrawal No. 5 on September 27, 1909 (R. 93).

On July 1, 1910, the Secretary of the Interior approved the recommendation of the Geological Survey that these lands be withdrawn from settlement or entry and reserved for legislation affecting petroleum lands of the United States. This was approved by President Taft the next day. (R. 94.)

On September 2, 1912, this section, by executive order, was permanently withdrawn and included in Naval Reserve No. 1. (R. 95.)

On August 25, 1908, George Hay and M. W. Buffington applied to the State of California to purchase this land, but their applications by the terms thereof could not be approved before November 23, 1908. (R. 18.) About one year later Oscar Sutro, as agent for Standard Oil Company, purchased from Hay his interest in his portion of said section and on January 31, 1910, received from California purported patent therefor. On January 20, 1910, the State issued patent to Buffington purporting to cover the balance of the section. (R. 6.)

Nothing was done toward developing said lands until August, 1918, when Standard Oil Company began drilling a well which discovered oil in January, 1919. A few months later they acquired under contract the right to develop the balance of the section claimed by Buffington.

On January 14, 1914, the General Land Office directed that charges be filed and proceedings begun in the local land office against this section on the ground that it contained valuable petroleum deposits and was known to be mineral in character at and prior to the date of survey, December 20, 1901. (R. 35.) No further action was taken thereon until March 2, 1921, when the General Land Office ordered a renewal of the proceedings and amended the charges of known mineral character as of the date of acceptance of survey, January 26, 1903. (R. 75-6.)

Notice was served upon claimant and proceedings started under the regulations prescribed by

the Interior Department for the orderly determination of the charges by means of a hearing at which both the government and claimant could present testimony under oath and cross-examine witnesses. These regulations required claimants contesting charges to file within thirty days a written denial under oath or a statement of facts rendering the charges immaterial. (44 L. D. 572.)

No such answer or statement was filed by claimant in the local land office, where the proceedings were pending, or elsewhere, except a certain brief by Mr. Sutro, attorney for claimant, with Secretary Fall on May 26, 1921, the opening paragraph of which recited:

> This is the argument in support of the request that the Secretary of the Interior decide that in view of the previous action of the Department and of its regulations in force in January, 1903, the title to said Section [36] is vested in the State of California or its grantees. (R. 79.)

Mr. Sutro was in Washington in May, 1921, and conferred with various officials of the Departments of Justice and of the Interior. It was agreed that the Department of Justice would not seek the appointment of a receiver nor an injunction against the operation of the lands provided there should be no further development of the lands by claimant. This agreement was based on the understanding that claimant would endeavor to secure an early

determination by the Interior Department of the known mineral character of the land. (R. 69.)

Mr. Sutro believed that the question of title to this land could be settled without taking testimony as to the geological or structural conditions on adjacent lands. First Assistant Secretary Finney of the Interior Department disagreed with him. (R. 72.) Nevertheless, Mr. Sutro asked for an oral hearing before the Secretary, a proceeding where it was impossible to take testimony on disputed questions of fact. (R. 73.)

Secretary Fall granted such oral hearing on June 8, 1921, at which claimant was represented as well as various officials from the Departments of the Interior, Justice, and Navy. The proceedings consisted of oral argument by Mr. Sutro, following the points in his brief previously filed, wherein he urged that it was not necessary to proceed with taking testimony before the local land office on the charges pending, because the previous action of the Department and its regulations had already determined the character of the land. He relied on three grounds for relief, viz:

1. The nonmineral character had been determined in 1904 when this land was included with other large tracts in the Order restoring the same to agricultural entry.

2. It had been determined to be nonmineral because of the existence of certain rules of the Department in 1903 providing that states could not

exchange school lands for other lands on the ground of their mineral character, unless there was mineral actually exposed or discovered on the section in question, and since there was no mineral actually exposed on this Section 36 in 1903, if this rule had been applied, this section would have been held nonmineral.

3. There were many and compelling equities in favor of the claimant's title. (R. 37 et seq.)

At the end of Mr. Sutro's argument, Secretary Fall, after asking various questions of Assistant Secretary Finney and others, announced "The contest will be dismissed." (R. 49.) No findings or conclusions were made, no opinion filed, and no opportunity offered for presentation of testimony, or argument on behalf of the government.

In February, 1924, the Congress of the United States, by joint resolution, directed petitioner, as Secretary of the Interior, to institute proceedings to assert and establish title of the government to this section. Accordingly petitioner issued an order reversing and vacating the order of Secretary Fall aforesaid and directed the Register and Receiver at Visalia, California, to hold a hearing on the charge that the land was mineral in character and so known on January 26, 1903. (R. 21.) Notice of said charges was served upon claimant and preparations made by petitioner for further proceedings, when in October, 1925, Standard Oil Company filed its bill in the Supreme Court of the

District of Columbia against this petitioner for a permanent injunction restraining petitioner from proceeding further with the charges against said land.

An answer was filed denying that the Interior Department had ever adjudicated the known mineral character of the section. (R. 27.) Chief Justice McCoy, of the Supreme Court of the District, after a hearing, denied complainant's motion for a preliminary injunction. (R. 50.) Acting Associate Justice Smith, of the Supreme Court of the District of Columbia, after a hearing on the merits, found for the plaintiff, and enjoined petitioner from proceeding with the charges. (R. 113.) On appeal, the action of the trial court was affirmed by the Court of Appeals of the District of Columbia. (R. 125.)

SPECIFICATION OF ERROR

The Court of Appeals erred in affirming the judgment of the trial court and in holding that the dismissal by Secretary Fall of the contest then pending was an adjudication of the nonmineral character of the land in 1903.

REASONS FOR GRANTING THE WRIT

The case involves considerations of great importance to the government and the people of the country. The judgment of the Court of Appeals, due probably to a misreading of the record before it, has enjoined the head of one of the administra-

tive branches of the Federal Government from proceeding with the discharge of duties assigned to him by the Congress. This judgment does violence to principles long established in the administration of the public lands and repeatedly recognized by the decisions of this court. Secretary Fall could alienate the title of the United States to this land only by an adjudication on the merits. This he did not do. The most that can be said of his dismissal of the charges is that he considered the government estopped to continue the proceedings, because of the existence of the school-land regulations of 1903 or the relief from suspension in 1904 or the equities urged by claimant.

ARGUMENT IN SUPPORT OF PETITION

Secretary Fall neither made nor attempted to make any decision on the merits, nor was he asked to do so. The case of *United States* v. *Southern Pac. Co.*, 251 U. S. 1, 13, decided in 1919, laid down the rule that the test of known mineral character was not the actual production of mineral from the land, but rather "geological conditions, adjacent discoveries and other external conditions" upon which experienced men rely. This case likewise definitely determined that lands immediately adjacent to Section 36 were known mineral in 1904.

It was evident to all parties concerned that no adjudication of the known mineral character of this land could be made without taking evidence, which has never been done in this case. Mr.

Sutro's efforts were directed towards persuading Secretary Fall that it was not necessary to go into the merits because, as he said, "the time has passed when the United States can assert its title thereto, and that the United States is estopped by the judgment of this department that this was nonmineral land in 1904, and by its own regulations, which defined it as nonmineral land in 1903." (R. 46.)

The opinion of the Court of Appeals is based upon an absolutely erroneous construction of the record in that it states repeatedly (R. 121, 122, 123) that it was agreed by the parties at the oral hearing that it was not necessary to go into the question of geological evidence. This is a gross error. The record recites that this contention was made by Mr. Sutro, claimant's attorney, but was disputed by Assistant Secretary Finney, and because Mr. Sutro considered this question of fact immaterial it was not discussed at the hearing on June 8, 1921, nor at any prior conferences between Mr. Sutro and Secretary Fall or Assistant Secretary Finney. (R. 72.)

Chief Justice McCoy of the Supreme Court of the District, in denying the motion for an injunction *pendente lite*, correctly appraised the effect of Secretary Fall's dismissal of the charges, when he said (R. 58):

> The Secretary did not determine that the lands were not known in 1903 to be mineral. He said in substance that it was not worth while to waste time to inquire as to that, for

> even though the evidence taken on the contest might show that the lands were known to be mineral still he could not find so, as the inquiry as to that had been precluded by the department. If the action of Secretary Fall was final, then there never has been and never will be a determination of the contest directed by the department in 1914, notwithstanding that since 1900 the department has from time to time shown that it considered the question to be an open one.

The Court of Appeals, as a result of its failure to read correctly the plain record before it, has erroneously created an adjudication on the merits out of an informal argument before Secretary Fall, which was directed solely to persuading the Secretary that a determination on the merits, which was then pending in the local land office, was an unnecessary waste of time and money, because the government was estopped to claim this land.

Wherefore it is respectfully submitted that this petition for a writ of certiorari to review the judgment of the Court of Appeals of the District of Columbia should be granted.

W. C. Morrow,
Attorney and Special Counsel.

February, 1928.

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